

United States Department of Agriculture

FOOD AND DRUG ADMINISTRATION

NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT

[Given pursuant to section 4 of the Food and Drugs Act]

22201-22300

[Approved by the Acting Secretary of Agriculture, Washington, D.C., October 31, 1934]

22201. Adulteration of oysters. U. S. v. Gordon Milbourne and Morris Milbourne (Milbourne Oyster Co.). Pleas of nolo contendere. Judgment of guilty. Fine, \$75 and costs. (F. & D. no. 29373. I.S. nos. 45728, 46015, 47553.)

This case was based on shipments of oysters which contained an excessive amount of water.

On May 2, 1934, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Gordon Milbourne and Morris Milbourne, copartners trading as Milbourne Oyster Co., Crisfield, Md., alleging shipment by said defendants in violation of the Food and Drugs Act, on or about November 17, November 18, and November 21, 1931, from the State of Maryland into the States of Ohio, North Carolina, and Missouri, respectively, of quantities of oysters which were adulterated. Certain of the shipments were labeled, "Moco Brand Oysters."

It was alleged in the information that the article was adulterated in that excessive water had been mixed and packed with the article so as to reduce and lower and injuriously affect its quality and strength; in that excessive water had been substituted in part for the article; and in that oyster solids, a valuable constituent of the article, had been in part abstracted.

On May 2, 1934, pleas of nolo contendere were entered, and the court found the defendants guilty and imposed a fine of \$75 and costs.

M. L. WILSON, *Acting Secretary of Agriculture.*

22202. Adulteration of canned salmon. U. S. v. Copper River Packing Co. Plea of guilty. Fine, \$100 and costs. (F. & D. no. 30306. Sample nos. 15056-A, 15235-A, 15244-A, 15281-A, 25972-A.)

Sample cans of salmon taken from the shipment involved in this case were found to be tainted or stale.

On December 18, 1933, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Copper River Packing Co., a corporation, Seattle, Wash., alleging shipment by said company on or about August 6, 1932, from the Territory of Alaska into the State of Washington, of quantities of salmon which was adulterated.

It was alleged in the information that the article was adulterated in that it consisted in part of a decomposed and putrid animal substance.

On April 16, 1934, a plea of guilty was entered on behalf of the defendant company, and the court imposed a fine of \$100 and costs.

M. L. WILSON, *Acting Secretary of Agriculture.*

22203. Misbranding of sirup. U. S. v. Bliss Syrup & Preserving Co. Plea of guilty. Fine, \$120. (F. & D. no. 30328. Sample nos. 2133-A, 2144-A, 2148-A, 2245-A, 2246-A, 2247-A.)

This case was based on several interstate shipments of a product represented to consist of cane-flavored sirup. Examination showed that it was lacking in cane flavor and that the cans contained less than the amount declared on the label.

On or about February 27, 1934, the United States attorney for the Western District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Bliss Syrup & Preserving Co., a corporation, Kansas City, Mo., alleging shipment by said company on or about April 6 and June 13, 1932, from the State of Missouri into the State of Texas, and on or about June 22 and May 23, 1932, from the State of Missouri into the State of Colorado, of quantities of sirup which was misbranded. The article was labeled in part: "Bliss Pan Cake Brand Cane Flavor Syrup, * * * Net Weight 5 Lbs. [or "Net Weight 2 Lbs. 8 Oz."] Bliss Syrup & Preserving Co. Kansas City, Mo. A Delicious Blend of Corn Syrup and Refiners Syrup."

It was alleged in the information that the article was misbranded in that the statements, "Pan Cake Syrup Cane Flavor", borne on the can labels, the statement, "Net Weight 5 Lbs.", borne on the labels of certain of the cans, and the statement, "Net Weight 2 Lbs. 8 oz.", borne on the labels of the remainder of the cans, were false and misleading, and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser, since corn sirup predominated in its composition and was its predominant flavor, and the cans contained less than labeled. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the packages, since the statements made were incorrect.

On March 20, 1934, a plea of guilty was entered on behalf of the defendant company, and the court imposed a fine of \$120 and costs.

M. L. WILSON, *Acting Secretary of Agriculture.*

22204. Misbranding of flour. U. S. v. 411 Bags of Flour. Product released under bond pending trial of issues. Tried to the court. Judgment and decree for the Government. (F. & D. no. 30611. Sample no. 46484-A.)

Sample sacks of flour taken from the shipment involved in this case were found to contain less than the labeled weight.

On June 15, 1933, the United States attorney for the Western District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 411 bags of flour at Jennings, La., alleging that the article had been shipped in interstate commerce, on or about May 18, 1933, by the Texas Star Flour Mills, from Galveston, Tex., and charging misbranding in violation of the Food and Drugs Act as amended. The article was labeled in part: "Texas Star Flour Mills Tidal Wave Flour Galveston Texas, Bleached 24 Lbs. Net."

It was alleged in the libel that the article was misbranded in that the statement "24 Lbs. Net" was false and misleading and deceived and misled the purchaser. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package, since the statement made was incorrect.

On July 6, 1933, the Texas Star Flour Mills having filed a claim for the property and having executed a good and sufficient bond, the product was ordered released by the court in order to prevent its waste and destruction. On March 1, 1934, the case having come on for trial before the court, and the evidence and arguments of counsel having been heard, the following opinion was handed down (Dawkins, J.):

"This is a proceeding under the Pure Food and Drug Act, in which certain flour was seized and sought to be condemned because of its alleged misbranding, in that it was short in weight, each sack or bag containing substantially less than the twenty-four pounds stamped thereon. After seizure, the Texas Flour Mills, of Galveston, Tex., appeared and without admitting the shortage, applied to bond the seizure for the purpose of re-weighing and re-stamping it, if necessary, in order to conform to the law. The agents of the Government refused to participate in this course, unless the claimant would admit or confess the violation of the law, and inasmuch as the term of court in the division where the matter arose had been held and there would be no sitting until the middle of December, the court permitted the claimant, notwithstanding the objection of the agents of the Department of Agriculture, to release the flour on bond, on condition that it be reweighed and the correct weight stamped thereon. This was done, the flour was turned over to the claimant and has been disposed of. The matter has now been submitted to the court, after a waiver of the jury, upon an agreed statement of facts and other evidence. I find the facts as stated in the stipulation and as follows: